THE PRIVILEDGES AND PRACTICE OF PARLIAMENTS IN *ENGLAND.*

Collected out of the Common Lawes of this Land.

Seene and allowed by the Learned in the Lawes.

COMMENDED
To the High Court of Parliament now Assembled.

Printed in the Yeare, 1641.

The principall Contents of this ensuing Discourse.

1. *THe Originall of Parliaments.*
2. *The* Saxons *denominations of Parliaments.*
3. *The* French *and* Germane *denominations of the same.*
4. *The great difference betwixt our Parliaments and the Court of Parliament in* France.
5. *The King may call a* Parliament *by his Deputies, or Lieutenants, though hee himselfe be absent in transmarine parts.*
6. *The King may call and hold a Parliament before his Coronation; as also in his Minoritie or Noneage.*
7. *An Vsurper of the Crowne may call a Parliament.*
8. *The penaltie of the Shreiffe, for making false returnes of Knights or Burgesses.*
9. *The remedie of penaltie for any Archbishop, Bishop, Duke, Marquis, Earle or Baron, if summoned by Writ and not comming through Sicknesse, &c.*

Gen Res 15037 Brown
988207

10. *Knights and Burgesses of the Parliament must take the Oathes of Allegeance and Supremacie.*

11. *The Clergie of the* Conuocation, *though necessarily to be summoned, yet no part or member of the* Parliament.

12. *The particular Priuiledges of the Parliament-men of Vper and Common-House, after summons and Election.*

13. *The forme of a true Protection.*

14. *Concerning the due placing of the Lords in the Vpper House.*

15. *The sitting of the prtncipall Officers of State in the Vpper House.*

16. *Concerning Voyces of the Vpper and Commons-House.*

17. *The Bishops haue no Voyces in* Parliament.

18. *The King cannot change the Lawes without the consent of* Parliament.

19. *The Iudges or Iustices, haue no Voyces but to expound the Law.*

20. *An Abstract of some Memorable things done by* Parliaments *in* England.

A discourse of the Priviledge and practice of the high Court of Parliament in England, collected out of the Common-Lawes of this Land.

THe most Common and best meanes for the preservation and Conservation aswell of private as publique Trãquillitie and Societie used in all Ages, and by all Nations, is by way of lawfull Assembly, and Consultation, which wee call *Parliament*, to looke into the necessitie of the publique Condition, and so to fore-see seasonable remedie.

Where no Councell is, the people fall, But where many Councellers are, there is health, Prov. 11. and 14. *Tully* saith, *Communis vtilitatis de relictio contra naturam est.* The Saxons called this Court *Miclegemot*, the great Assemblie, and *Witenagemot*, the Assemblie of wise men; The Latine Authors of those times called it *Commune Concilium, magna curia generalis conventus, &c.* But WILLIAM the Conquerour as it seemeth changed the name of this Court, and first called it by the

the name of *Parliament*. But manifeſt it is, that the Conquerour changed not the frame or Juriſdiction of this Court in any point; yea the very names which are atributed to this Court before the Conqueſt, are continued after the Conqueſt to this day. And where ſome doe ſuppoſe, that in the Parliament holden at *Weſtminſter* in the 3. *Ed.* 1. called *Weſtminſter* the firſt, the word *Parliament* firſt crept in, where it is called the firſt generall *Parliament* by the aſſent, of the Ar. biſhops, Biſhops, Abbots, Earles, Barons, and all the Communaltie of the Land ſummoned to the ſame; yet it is manifeſt that the name of *Parliament*, was long before that time, and for proofe thereof; note: 21. *Ed.* 3. *fol.* 60. and in Sir *Edward Cookes* Preface to his 9th. Booke, where it is fully prooved; That the Conquerour himſelfe did hold this Parliament, and other his mediate Succeſſors. Although in the bookes of Statutes, mention is not made of any Statute before *Magna Charta*, in the 9th. yeare of *Hen.* 3.

And this is not that Court, which in *France* beareth the name of *Parliament*, for they are but ordinary Courts of Juſtice: But this is that Court which both *England* and *Scotland* agreeth in naming it *Parliament*, which the *French* call, *Aſſemble de eſtates*, or *Les eſtates*: And the *Germanes*, *A Rikes Daggh*, or *Dyet*.

Of this Court it may be ſaid, *Si vetuſtatem ſpectes eſt antiquiſſima, ſi dignitatem eſt honoratiſſima, ſi juriſdictionem eſt copioſiſſima*. And as Sir *Edward Cooke* obſerveth in his Preface to his 9. Booke. This great and Honorable aſſembly hath a Three-fold end; firſt, that the Subject might be kept from offeding, that is, that offences might be prevented, both by good and provident

vident Lawes and by due execution of them. Secondly, that men might live ſafely in quiet; And thirdly, that all men might receive Juſtice by certaine Lawes and holy Iudgement. To the end that Iuſtice might be the better adminiſtred, That queſtions and defects in Law, by this high Court of Parliament, be explained and brought to certainty and judgement.

Our Soveraigne King *Charles* in his late Proclamation calls it, *The great Counſell of Vs and Our Kingdome.*

And for ſomuch as this *great* and *principall Court* is the Kings Court, and the Court of the Kingdome, whereof the King is ſupreame head and Governour, neyther the Lords nor the Commons can ſummon it nor appoint any certaine time or place for the Aſſembly of the Parliament; For that onely doth appertaine to the King to doe. See the ſtatute 21. *Ric.* 2. *Ca.* 12. And in the Kings name onely ſuch ſummons muſt bee made as an abſolute Prerogative incident to his Crowne and Dignity. Like as divers things doe ſolely belong to the King, whereof the Subject hath nothing to doe: as *fœdera Percutere* to make leagues, or *bellum indicere*, 9. *Ed.* 4. *fol.* 6. The King onely without the Subject, may make letters of *Deniſation*, to whom and how many he will. And the King by his Proclamation, may make any Coyne lawfull money of England; And many other things doe appertaine to the King as ſpeciall flowtrs of his Crowne.

And if the King happen to be in any forreine part, yet the Parliament holden in this Realme in the Kings abſence muſt be ſummoned in the Kings name vnder the *Teſte* of the Kings *Lieutenant*, as by the ſtatute 8. *Hen.* 5. *Ca.* 1. may appeare.

Bracton saith, Parliaments have beene holden by the Kings Lieuetenant Procurator or Deputy, as in the 13. *Edw.* 2, the King constituted *Adomarum de Valetia Comitem Pembrocciæ custodem regni sui, & locum suum tenentem quamdiu Rex in partibus transmarinis moram fecerit.*

And the Kings of this Land have constituted as their Lieuetenants or Deputies to summon the Parliament 3, or 4 in a Commission as in the 24, of *Hen.* 8, at his being at *Calliee* a Parliament was holden by Commission as followeth.

Henricus 8 *Dei gratia Angliæ, Franciæ Rex, fidei defensor: Dominus Hiberniæ Reverendissimo in Christo Patri Edwardo Archiepiscopo, Eborac. Perdilecto & fideli suo Thomæ Audeley Militi, domino custodi Magni Sigilli, ac Charissimo consanguineo suo Reberto Comiti Sussex salutem: Cum Presens Parliamentum nostrum apud Civitatem nostram London 3. Die Novembris Anno regni nostri viceſimo primo inchoat. & vsque Westm. Prorogat. & ibidem post diversas continuationes & Prorogationes idem Parliamentum nostrum apud Westminstr. 14, diem Novembris apud Westminstr, Etiam Prorogat fuerat, Ibidem tunc tenendum nos idirco considerantes absentiam nostram a regno nostro Angliæ apud Calice existent. in causis vrgentissimis nos & rempublicam regni nostri, concernent. aliysq; Considerationibus nos specialiter moventibus ac de fidelitate, integritate, industria & circumspectione vestris plenius confidentes, de advisamento & assensu consilij nostri assignamus vos & dues vestrum Dantes vobis & duobus vestrum plenā potestatem, facultatem, & authoritatem, hac instante die Lunæ ad & in quartum diem Februar. Prox. futurum vsq; Westm. pradictum prorogandum & continuandum*

andum ibidem tunc tenendum. Et ideo vobis mandamus quod circa premissa diligenter intendatis, ac ea in forma predict. effectualiter expleatis, Damus autem universis & singulis Archiepiscopis, Episcop. Abib. prior. duobus Marchionib. Comitibus, Vicecomit. Baronibus, Militib. Civibus, Burgensib. ac omnibus, aliis quorum interest aut interesse poterit, in hac parte: in mandatis quod ipsi omnes, &c. Singula in premissis omnibus singulis facientium & exequendum intendentes fuit consulentes & obedientes pront decet. In cujus rei Testimonium has literas nostras fieri fecimus Patentes, Teste me ipso apud Westm. 4. Die Novembris, anno regni nostri vicesimo quarto.

Penals.

And a King in possession of his Kingdome during his raigne may before his Coronation summon his parliament as taking one example in a case so cleere for all: King *Hen. 6*, was not crowned vntll the eight yeare of his raigne, and yet in his 1, 2, 3, 4, 5, and 6, yeare of his raigne divers parliaments were holden, (as also our gracious Soveraigne King *Charles*, called a parliament, *Anno* 1 before his Coronation) and summoned by him *Hen. 6*, as in the Statutes may appeare: For it is cleerely resolved by all the Iudges of *England*, that presently by discent he is absolutely and compleatly King without any essentiall ceremony or act to be done *ex post facto*, and that Coronation is but a royall ornament or outward solemnization of the discent, and the King is as absolute and compleat a King both for matter of Iudicatorie as Grants, &c. both before his Coronation as he was after.

Alſo the King being within age, may aſwell ſummon his Parliaments as if he were at full age, as by the example was ſeene in the ſaid *Hen.6.* and *Ed.6.* and obſerve the caſe of the Dutchie of *Lancaſter in Plowdens Commentaries*, 221. 6. Where it is agreed, that the perſon of the King is not infeebled by his nonage, for his perſon doth alwayes remaine of full age, aſwell to make guifts and graunts as in adminiſtration of Iuſtice.

And the diverſity of Sex maketh no difference, as by the Statute made in the firſt yeare of Queene *Mary* holden by Prorogation *Cap.* 1. is declared.

Alſo a King being in poſſeſſion of his Kingdome, whether by rightfull Title or by wrong as an *Vſurper*. He is a perſon able *Ipſo facto* to ſummon a Parliament, as by the example holden by *Henry* 6. before and after the redemption of his Crowne being removed therefrom by *Edward* 4 wherein the ſaid *Edward* was in his Remitter as is to be ſeene in *Baggots* aſſize, in the 9. yeare of *Ed.* 4. *fol.* 1. 6. *& ſequentium:* whereby it is ſaid, that *Hen.* 6 was King in poſſeſſion. And it was neceſſary that the Realme have a King, vnder whom the Lawes may bee holden and maintained, and therefore though hee was but by uſurpation, yet every act Iudicially done by him, which doth concerne his Iuriſdiction Royall ſhall bee good, and bind the rightfull King his regreſſe, and divers other Examples there are hereof, See 1. *Henry* 7. *fol.* 3.

In ancient times after the King had ſummoned his Parliament to bee holden at a certaine day and place, Innumerable multitudes of people did make their acceſſe thereunto, pretending the priviledge of right to belong to them, and not onely to the Lords ſpiritu-

all

all and Temporall, but alſo to the Commonalty being Freeholders: But King *Henry* 3. having had experience of the miſchiefes and inconveniences by occaſion of ſuch popular confuſion, did take order and reſtrayned that over great acceſſe. So that none might come to his Parliament but thoſe who were ſpecially ſummoned, which his ſonne *Edward* 1. did carefully keepe and obſerve, according to that ancient ſaying, *Ad Conſilium ne acceſſeris ante quam voceris.* And ſo ever ſince this ſpeciall manner of ſummons of Parliament now uſed hath beene put in practiſe. The vſuall forme of ſummons for the Parliament for the Commonalty, is not ſpeciall, but a generall Writ is directed to the Sheriffe of every County or ſhire in *England* and *Wales*, in this forme.

Rex vice. N. Salutem quia de adviſamento & aſſenſu Conſilij noſtri quibuſdam arduis & urgentibus negotiis nos Statum & defenſionem Regni noſtri Anglia, & Eccleſ. Anglicanæ concernent, quandam Parliamentum noſtrum apud Civitatem noſtram Weſtm. 17, die Martij Prox. futuro teneri ordinavimus & ibidem cum Prelatis, magnatibus & proceribus dicti Regni noſtri colloquium habere, & Tractare, Tibi Precipimus firmiter injungentes quod facta Proclamatione in Prox. com. tuo poſt receptionem hujus brevis noſtri tenendum die & loco Predicto, duos Milites, gladiis cinctus magis idoneos & diſcretos cum predict. &c. Et Electionem illam in pleno com. tuo factam diſtinctè & apertè, ſub ſigillo tuo & ſigillis eorum qui Electioni illi interfuerunt nobis in Cancellariam noſtram ad dictum diem & locum certifices, indilate, Teſte meipſo, &c. vide Statut. 23. H. 6: Cap. 15.

And concerning thoſe of *Wales* to be ſummoned to the Parliament, read the Statute thereof 27, *Hen.* 8, *cap.* 26, Intituled, *an act for Lawes and Juſtice to be miniſtred in Wales*, in like forme as it is in this Realme, and alſo that other Statute made 35, *Hen.* 8, *cap.* 11. Intituled *an act for the due payment of Fees and wages of Knights and Burgeſſes of the Parliament, in Wales.* And thereof ſee in *Plowdens Commentaries* 120, Sir *Richard Bulkleys* Caſe and in *Dyer* 13.

And concerning thoſe of the County palatine of *Cheſter*, and of the City of *Cheſter* in this behalfe, ſee the Statute made 34, *Hen.* 8, *cap.* 3.

In *Anno* 1, of Queene *Mary* a great doubt was moved amongſt the Iuſtices and Serjeants, If the Queenes writ of ſummons of the Parliament in which the Stile or Title of *Supremum Caput Eccleſiæ Anglicanæ* were omitted, were good and ſufficient or vtterly voyde, &c. Becauſe the ſaid ſtile is vnited and annexed by the Statute made the 26, and 35, *Hen.* 8, to the Imperiall Crowne of the Realme, but the greater opinion was, ſuch ſummons is good enough, for they ſaid that *Supremum Caput* is not parcell of the Queenes name, but an addition, and the words in the Statute are onely in the affirmative and not negatively; That the ſtile ſhall be of neceſſity ſo written of the Queene. And this doubt was by Queene *Elizabeth* againe moved in the firſt Parliament and was adviſed and reſolved by great adviſe and deliberation (*vt ſupra*) ſee the Statute 1, and 2, of *Phil.* nd *Ma. cap.* 8, And in Maſter *Foxes* acts and Monuments ſo: The argument of *Iohn Hales* to the contrary, *cujuſcunque potiſſima pars eſt principium*, which Rule is expreſſed in ſir *Edward Cokes* 10, *part* 49, 1. *But Ibidem fol.* 161

161. a the ancient rule is cited, *qui libet poteſt renunti. are Iuris Pro ſe interducta.*

At every County after the delivery of the Parliament writ to the Sheriffes, Proclamation ſhall be made in the full County of the day and place of the Parliament, and that all men ſhall attaine for Election of the Knights for the ſame County for the Parliament. The which Knights muſt be reſident within the ſame County, whereof they are to be choſen the day of the writ of ſummons of the Parliament, whereof every one ought to have 40 S. of Freehold within the ſaid County beyond all charges. And ſuch who have the greateſt number of the ſaid Electors, ſhall be returned Knights for the ſame County, See 7. *Hen.* 4. *cap.* 12, 1, *Hen.* 6, *cap.* 1, 8, *Hen.* 6, *cap.* 13, and 10, *Hen.* 6, *cap.* 7.

The Sheriffe may examine every one of the ſaid Electors vpon the ſaid Evangeliſts how much hee may diſpend by yeare if hee doubt of the value therof, 8, *Hen.* 6, *cap* 15.

The ſaid Election ſhall be made in the full County betweene the houres of 8, and 9, before noone; 23, *Hen.* 6, *cap.* 15.

The ſaid Knights ſhall bee returned into the Chancery by Indenture ſealed betweene the Sheriffe and the ſaid Electors, 8, *H.* 6, *Cap.* 7, 7, *H.* 4, *cap.* 1, 23. *Hen.* 6, *cap.* 6, *vt patet per breue ſupra.*

Every Sheriffe who doth not make a true returne of ſuch Election of Knights to come to the Parliament according to the Statute in that behalfe made, that is to ſay, The Statute 8, *H.* 6, *cap.* 7, ſhall forfeit 100 l. to the King, and 100 l. to the Knight ſo choſen, who ſhall Commence his action within 3. moneths after the

Parlia-

Parliament commenced. And if he ſo doe not and proſecute his ſuite in effect and without fraud: any other man who will may have the ſaid ſuite, for the ſaid 100. as the Knight had, and coſts of ſuit alſo ſhall be awarded to the ſaid Knight, or any other who will ſue in his behalfe, 23. *Hen.* 6, *Cap.* 15.

No Sheriffe ſhall be choſen for a Knight of the Parliament nor for a Burgeſſe, ſee the Booke of Entries 411. And at a Parliament holden 38. *Henry* 8, It was admitted and accepted that if a Burgeſſe of a Parliament bee made Mayor of a Towne, or have Iudiciall Iuriſdiction, or another is ſicke, That theſe are cauſes ſufficient to chooſe others: And ſo was done by the Kings Writ out of the Chancery, comprehending this matter which was in *Communi domo Parliamenti*, 7. and 38. *Henry* 8.

In every writ of Parliament directed to the Sheriffe, this clauſe ſhall be inſerted: *Electionem tuam in pleno Com. tuo factam diſtinctè & apertè ſub Sigillo tuo & Sigillis eorum qui electioni illi interfuerunt nos in Cancellariam noſtram ad diem & locum in breve Content. certificos indilato Henry* 4. *cap.* 15.

The Sheriffe after the receipt of the Writ of Election, &c. ſhall deliver without fraud a ſufficient precept vnder his ſeale to every Mayor, and Bayliffe, or Bayliffes where no Mayor is, of City and Burrough within his County, reciting in his precept the writ of Parliament, commanding them by the ſaid precept; If it bee a City to thoſe Citizens for the ſame City by Citizens, And if it bee a Burrough then Burgeſſes, by Burgeſſes of the ſame to come to the Parliament,

And

And that the ſaid Major, or Bayliffe, or Bayliffes, where no Major is, ſhall returne lawfully the ſaid precept to the Sheriffe : and thoſe who made the Elections, and of the names of the ſaid Citizens & Burgeſſes by them ſo choſen ; 23. *Hen. 6. cap.* 15.

The Sheriffe ſhall make a good returne of his writ, and of every returne of the Major, and Bayliffe or Bayliffes, or Bayliffes where no Major is to him made. And if the Sheriffe doe contrary to this Statute made for the election of Knights, Citizens, and Burgeſſes to come to the *P*arliament, hee ſhall incurre the paine of 200 pounds to the King, and ſhall bee impriſoned for one whole yeare, without Bayle or maine-price. And the Knights for the County returned contrary to the ſaid Ordinances, ſhall loſe their wages by the Statute, 8. *Hen. 6. cap*, 7. and the Sheriffe ſhall loſe 100 pounds to every Knight, Citizen, and Burgeſſe, choſen in his County to come to the *P*arliament, and not duely returned, or to any other who will ſue in his default by action of Debt, with coſts, expended in that caſe : In which ſuite, the Defendant ſhall not wage Law, nor be eſſoyned, *Anno* 23. *Hen*, 6. *cap.* 15.

If the Major, and Bayliffe, or Bayliffes, or Bayliffes where no Major is, doe returne others, then thoſe who be choſen by the Citizens and Burgeſſes of the Cities and Boroughs, where ſuch Election ſhall bee made, hee ſhall forfeit to the King 40 pounds, and ſo much to the Citizen or Burgeſſe choſen to come to the Parliament and not duely returned by the Major or Bayliffe : or Bayliffes where no Major

is, or to any other person who in default of such Citizen or Burgesse so chosen, will sue for it by action of debt with costs expended. And they shall haue a writ of debt for the said 40. pounds, in which the defendant shall not wage his Law nor shall be essoyned, 23. *Hen. 6. cap.* 15.

Every Knight, Citizen, or Burgesse, chosen and not returned, shall Commence his action within 3. Moneths next after the commencing of the said Parliament. In which he must proceed effectually without fraud, And if he so doe not, any other who will sue for it, shall have the said action for the said Forfeiture, and costs in the same expended: in which the Defendant shall not wage Law, nor shalbe essoyned; *Anno* 23. *Hen. 6 cap.* 15.

If any Knight, Citizen, or Burgesse, that shall be returned by the Sheriffe to com. to the Parliament, be after such returne put out, and another put in his place, he that is in his place so put out, if he take upon him to be a Knight, Citizen, or Burgesse, shall forfeite to the King 100. pounds, and so much to the Knight, Citizen, or Burgesse, returned by the Sheriffe; and so afterwards put out, and the same Knight, Citizen, or Burgesse, so put out, shall have an Action of debt against him so put in his place, his Executors and Administrators, and shall commence his action within 3. Moneths after the beginning of the Parliament; and if hee sue not as before, any other who will, shall haue the said suit; in which the Defendant shall not wage his law, nor shall be essoyned; so that such Knights of the Parliament chosen, bee a

Knight

Knight or ſuch Eſquire or Gentleman of the ſame County, who may be a Knight, and none to be ſuch a Knight, who ſtands in the Degree of a Yeoman; *Anno* 23. *Hen.* 6. *cap.* 15.

All perſons and Commonalties who ſhall bee ſummoned to the Parliament, ſhall come as it hath beene accuſtomed of the ancient time: and hee that commeth not having no reaſonable excuſe ſhall be amerced and otherwiſe puniſhed as of ancient time hath beene vſed, 5. *R.* 2. *Statut.* 2. *cap.* 4.

If any Archbiſhop, Biſhop, Duke, Marquis, Earle or Baron, be ſummoned by the Kings Writ to come to the Parliament, and therow ſikneſſe or any other infirmity he cannot make his appearance at the ſaid *P*arliament, he muſt procure from the King his Warrant of abſence, as in like caſe was granted to the Abbot of *Euſham*, in the 23. yeare of *Hen.* 8. in forme following.

H. 8.

By the King.

Truſty and welbeloved. We greet you well, and albeit you have monitiõ among other Prelates of our Realme to bee preſent at our high Court of Parliament to bee holden: yet neverthelеſſe we of our eſpeciall grace conſidering your debility and age, bee content and by theſe preſents Licence you to be abſent from our ſaid Parliament during the continuance, prorogation, or adiournment of the ſame: The ſaid Monition, or any other

writ directed to you, or Commandement given by vs to you notwithstanding vnder our Seale, signed at our Mannor of Greenwich, *The 6. of January in the 23. of our raigne.*

To our trustie and welbeloved in God, the Abbot of our Monastery of *Eusham*.

And it appeareth to be true, which *Fortescue* saith in his 18. *Cap. Fol.* 40. That acts of Parliament and Statutes in *England*, are not made onely by the Princes pleasure, but also by the consent of the whole Realme: So that of necessity they must procure the Weale of the whole Realme, and in no wise tend to their hinderance, and it cannot be otherwise thought but that they are repleniſhed with much wit and wisedome, seeing they are not ordained by the advise of one man onely, or of a 100 wise Counsellors, but of more then 300 chosen men, which agreeth with the ancient number of ancient Senators of *Rome*.

No Baron, Knight, Citiven or Burgesse, who shall be chosen to come to the Parliament, shall not depart vntill that Parliament be ended or prorogued if hee have not license of the Speaker, and of the Commons assembled in that Parliament, which license shall be entred in the Booke of the Clearke of the Parliament appointed for the Commons House, vpon paine of losing their wages, whereof all Counties and *Burroughs* shall be discharged, 6. *Hen.* 8, *cap.* 16.

Con-

Concerning the due leavying of Knights Fees and wages for attendance at the Parliament, ſee the Statute made 23, *Hen. 6. cap.* 11.

Knights and Burgeſſes for the Parliament muſt take the *Oath of Allegeance*, and ſo ſhall Citizens and Barons for the five Ports for the Parliament, before they doe enter into the parliament houſe, *Anno* 5. *Eliz. cap.* 1. and they muſt alſo take the *Oath of Supremacie*, made 7, *Iacobi cap*, 6. Which two Oathes ſhall be taken before the Lord Steward for the time being, or his Deputy or Deputies.

Memorandum in the Statute made, *Anno* 25. *Hen.* 8. *cap.* 19. entituled an Act concerning the ſubmiſſion of the Clergie to the Kings Majeſtie, is contained, That the Convocation is and alwayes hath bin and ought to be aſſembled by the Kings writ, The forme whereof is thus ſet downe by Doctor *Cowell* in his Interpreter *Verbo Proclam.* Firſt, the King directeth his writ to the Archbiſhop of each Province for the ſummoning of all Biſhops, Deanes, Archdeacons, Cathedrall and Collegiate Churches, and generally all the Clergie of his province: after their beſt diſcretions and judgements, aſſigning to them, the time and place in the ſaid writ, Then the Archbiſhops proceed in theiraccuſtomed courſe, one Example may ſhew both. The Archbiſhop of *Canterbury* upon his writ of ſummon received, directeth his letters to the Biſhop of *London* as his Deane provinciall: Firſt citing him peremptorily, And then willing him to cite in like manner all the Biſhops,

Deanes, Arch-Deacons, Cathedrall and Collegiate Churches, and generally all the Clergie of his Province, to the place and againſt the day prefixed in the writ, but directeth withall: That one Proctor ſent for every Cathedrall or Collegiate Church, and two for the body of the inferior Clergie of each Dyoceſſe may ſuffice, and by vertue of theſe Letters, Authentically ſealed. The ſaid Biſhop of *London* ſendeth the like Letters ſeverally to the Biſhops of every Dioceſſe of the Province, cyting them in like manner, and commandeth them not onely to appeare, but alſo to admoniſh the ſaid Deanes and Archdeacons, perſonally to appeare, and the Cathedrall and Collegiate Churches, alſo of the common Clergie of the Dyoceſſe, to ſend their Proctors at the day appointed in the Writ: And alſo will them to certifie to the Archbiſhops the names of all and every one ſo ſummoned by them, in a ſchedule annexed to their Letters Certificatory. The Biſhops proceed accordingly, and the Cathedrall and Collegiate Churches: as alſo the Clergie make choiſe of their Procters, which done and certified to the Biſhop, he returneth all anſwerable to his charge, (*Cave lector*) for the Clergie of the Convocation houſe, are no part or member of the Parliament as you may ſee reſolved by the Lord *Richard* Lord *Windſor*, and others; in the beginning of the ſixt Examination of Maſter *Philpot*, in the beginning of the raigne of Queene *Mary*: in Maſter *Foxes* booke of Martyrs, *Fol.* 1639. contrary to the opinion of Doctor *Cowell*, *ubi ſupra*. Nevertheleſſe it is enacted by the Statute 8. *Hen.* 6. *cap.* 1. That all the Clergie called to the Convocation Houſe by the Kings Writ, and their ſervants and familiars ſhall have and fully

fully uſe every ſuch liberty and defence, in comming, abiding, and going, as the Great men and commonalty of the Land (to bee called to the Parliament of the King) ſhall have.

And becauſe mention is here made of the priviledges appertaining to thoſe of the Parliament houſe; take heere a word or two thereof.

The Words of the Statute made the 11. *Hen.6.* cap. 11. are as followeth; The King willing to provide for eaſe and tranquillity of thoſe that come to his Parliament; Hath ordayned and eſtabliſhed, That if any aſſault or affray be made upon any Lord Spirituall or Temporall, Knight of the Shire, Citizen or Burgeſſe, comming to the *Parliament*, or the Counſell of our Soveraigne Lord the King, That then Proclamation ſhall be made, in the moſt open place of the City or Towne where the affray was ſo made, by 3 ſeverall dayes, That the party that made ſuch affray and aſſault, yeeld himſelfe before the King and his Bench, within a quarter of a yeare after the Proclamation ſo made, if it be in the time of the Terme, or otherwiſe in the next day in the time of the Terme following the ſaid quarter. And if he ſo doe not, that he bee attainted of the deede, and pay to the party greeved his double dammages, to bee taxed at the diſcretion of the Iuſtices of the ſame Bench for the time being, or by inqueſt if it be needfull: and make Fine and Ranſome at the Kings will, and if he come and be found guilty by inqueſt, examination or otherwiſe of ſuch affray or aſſault, then he ſhall pay unto the party greeved thereby, his double dammages found by the Inqueſt, or to be taxed by the diſcretion of th

Iuſticese

Juſtices, and make Fine and Ranſome at the will and pleaſure of our Soveraigne Lord the King.

Every Knight, Citizen, Burgeſſe, Baron of the Five Ports or others, called in the Parliament of the King; Shall haue priviledge of the Parliament during the Seſſions of Parliament, ſo that hee that doth arreſt any of them during that time, ſhall bee impriſoned in the Tower by the Nether Houſe, of which he is and ſhall be put to his fine and the Keeper alſo, if hee will not deliver him when the Serjant at Armes doth come for him by the commandement of the houſe whereof he is: See *Dyer*, 60.

The ſervants attending vpon their Maſters during Parliament who are neceſſary, and alſo ſuch Officers as bee attending upon the Parliament, as the Serjeant at Armes, the Porter of the doore, Clearkes and ſuch like; and in the ſame manner of their Chattells and goods neceſſary, ſo that they ſhall not bee arreſted and taken by any Officer, if it be not in caſe of Fellony or Treaſon; in the ſame manner, as the Judges and Miniſters of other Courts ſhall have for their ſervants goods and chattells neceſſary, See *Cromptons Courts fol.* 11. *a.*

But the Parliament doth not give priviledge *Tempore vacationis ſed Scedente curia.* See *Brookes Title priviledge*, 56. It appeareth that in the Parliament 31. *Hen.* 6. in the vacation, the Parliament being continued by prorogation, *Thomas Thorpe* the Speaker was condemned in a Thouſand markes damages by an Action of Treſpaſſe brought againſt him

him by the Duke of *Yorke* , and was committed to prison in Execution for the same, and after when the Parliament was re-assembled, the Commons made suite to the King and Lords to have *Thorpe* their Speaker, delivered for the good exployte of the Parliament: whereupon the Dukes Counsell declared the whole cause at large, whereupon the Lords demanded the opinion of the Judges, whether in that case, *Thorpe* ought to bee delivered out of prison by priviledge of Parliament; The Iudges made this answere, that they ought not to determine the priviledge of that high Court of Parliament: But for Declarations of proceedings in Law, Courts in case where writs of *Supersedeas* for the priviledge of the Parliament to be brought unto them, they answere; That if any person that is a member of the Parliament be arrested in such case as it be not for Treason or Felony, or for surety of the Peace, or for condemnation had before the Parliament; it is used that such persons be released, and may make Attorney, so as they may haue their freedome and liberty freely to attend that Parliament: Hereupon it was concluded, That *Thorpe* should still remaine in prison according to the Law. Notwithstanding, the priviledge of Parliament, and that he was the Speaker, which resolution was declared to the Commons by *Walter Moile* one of the Kings Serjeants at Law, and then the Commons were commanded in the Kings name by the Bishop of *Lincolne* , in the Absence of the Arch-Bishop of *Canterbury* then Chancellor, to choose another Speaker,

It hath beene much doubted whether one taken in Execution during the Parliament, may be set at liberty by writ of Parliament, as is to be seene in the first of *Eliz.* 4. *fol.* 8. *a Dyer*, 60. But at this day the Law is explained in that case by the statute made, 1. *Iacob. Cap.* 19. Intituled *An act for new execution to be sued against any who shall hereafter be delivered out of prison by priuiledge of Parliament. And for discharge of them out of whose custody such prisoners shall be delivered.*

The forme of a Protection to bee made by any person of eyther House of Parliament, unto such of their Servants as may stand in danger of Arresting in time of Parliament.

Whereas by the ancient Priviledges, Lawes and Customes of this Realme heretofore vsed and approved, The Lords Spirituall and Temporall, the Knights, Citizens, and Burgesses of the Parliament, have alwayes had their servants and followers priviledged and free from any molestation, trouble, arrest, or imprisonment, for some certaine dayes, both before the beginning and after the ending of the same. And whereas at this time a Parliament is summoned, where my selfe being a Baron and Peere of the Realme (or Knight, or Burgesse) and there to make my appearance, I vnderstand notwithstanding, that you or some of you, have now in your hands some Processe, Writ or Warrant, to molest, arrest, imprison I. B. *my houshold Seruant, in ordinary, whose*

whose attendance I haue speciall cause to use & employ in matters which doe much concerne and import my estate, and other occasions to be followed and solicited by him during this Sessions of Parliament. These are therefore to charge and command you, and every one of you both to withdraw the same Processe, Writ or Warrant, if any such be; As also, if thereby you or any of you, haue molested, arrested, or imprisoned him the said J.B. *within the compasse of the foresaid dayes of priviledge; That then vpon sight hereof, you presently set him at liberty, as you or any of you will answere the contrary. Given vnder my hand and Seale the* 16. *day of February,* 1627.

To all Majors, Sheriffes, Bayliffes, Sergeants, Knights, Marshals men, and all other his Majesties Officers.

R. S.

The forme of a Letter directed to the Sheriffe of *I.* for discharge of a Servant that is Arrested upon Execution, and during the time of the Parliament notwithstanding his Protection.

Mr. Sheriffe, whereas I was to be attended to the Parliament, I wanted one of my houshold servants, a Gentleman of mine, called B. *to whom I had given a priviledge for this Session of Parliament, to prevent any arrest or imprisonment for his debts, to the end he might waite on mee, and prosecute my businesse with more diligence and lesse danger of interruption in that kinde. But I now understand hee is in the Custody of the Sheriffe of* Middlesex, *within the dayes limitted upon an Execution of* 1000. *pounds, And that hee doth detaine him and will take no notice of my priviledge under my hand and Seale, although it hath beene shewed him: I have chosen rather to write to you, than to take the Ancient priviledges and liberties of the uppermost House of Parliament, and the honour of a Peere of this Kingdome into your friendly consideration, then that I would be offensive to any of your subordinate Officers, in sending for them and the Plaintiffe by a Serieant at Armes, or to convent them before the Lords for their contempt. And Mr. Sheriffe, I am further given to understand, that the Deputy is brother to the undersheriffe, and that hee did execute the Office the last yeare, which is a plaine defrauding of the Law, not being*

being three yeares betwixt them, being well known that his brother doth not intermeddle in the Office at all, nor taketh any notice at all what warrants are made foorth in his name, or of what writs are brought to his hands, for his Deputie doth take the whole benefit of the place into his owne hands. And by this meanes the vnder Sheriffe being in Glocestershire, *he hath a collour as his Deputy not to take notice of our priuiledges being directed to the Sheriffe; herewith I thought good to acquaint you, expecting your answere and the release of my Seruant, otherwise, I purpose not to lose the priviledge of a Peere of the Realme, whilest it concernes our honour. And is no Indempnity to the Plaintiffe, whose Iudgement and Execution is in as much force and strength, by a late Statute to take hold of* B. *afterwards as it was before.*

Concerning the vpper house of Parliament: first it is obserued, that thither commeth all Lords of the Parliament aswell Spirituall as Temporall, and they are summoned by the Kings writ also, but *Separatim*, and not by a generall writ to the Sheriffe of the County, as the Commons are summoned who

are of the lower house of the Parliament, the forme of which writ is as followeth.

Carolus, &c. Charissimo consanguineo suo Comiti Oxford. Quia de advisamento & assensu Consilij nostri, Pro quibusdam arduis & vrgentibus negotijs nos. stat. & defensionem Regni nostri & Eccles. Anglican, concernent, quoddam Parliamentum nostrum apud Civitat. nostram Westm. 12. die Martij, Prox. futur. teneri ordinavimus, & ibidem vobiscum ac cum Prælatis, magnatibus, & proceribus dicti Regni nostri Colloquium habere & tractare, vobis sub fide & legeancijs quibus nobis tenemini firmiter injungentes Mandamus, quod consideration dictorum negotiorum arduorum & periculis imminentibus Cessante executione quicunq; dicto die & loco personaliter interstis nobiscum, ac cum Prelatis, Magnatibus & Proceribus supradictis negotiis, tractare vestrumq; consilinm impensur. Et hoc sicut nos & honorem nostrum, & rempublicam, & salvationem, & defensionē Regni & Ecclesiæ, predict. expeditionem q; negotiorum dictorum diligitis nullatenus omittatis. Teste me ipso apud Westm. 18, die Ianuarij Anno Regni nostri, &c.

At the first day appointed by the King for the Parliament vsually the King in person doth ride thither, as it were, to open the doore of their Authority, attended by all the Lords Spirituall and Temporall in their Parliament Roabes, But if the King be let *per Ægritudinem* or by other causes, his Majesty may command the adjornament of the *P*arliament to be held at some other day at his pleasure, as was done at the first Day of the *P*arliament, holden the first yeare of the

the late Queene *Eliz.* as appeareth in *Dyer, Fol.* 203. *a.* Which Parliament was prorogued by writ patent, under their entire great Seale and signet, with the hand of the Queene; by which Booke the printed Booke of the statutes may be corrected.

And the King may under his great Seale assigne 2, or 3, of the Lords of the parliament to supply his place in Parliament, if he be sicke, or will not come for any other cause, *vt factum fuit, Anno* 31. *Eliz.* At which time the Archbishop of *Canterbury*, The Lord Treasurer of *England*, and the Earle of *Derby*, were Commissioners under the great Seale appointed and assigned to represent her Majesties person in Parliament.

And they doe sit one space lower from the Cloath of Estate in the Parliament House, See *Cromptons Courts, fol.* 12. *a.*

By the Statute made *Anno* 23. *Hen.* 8. *Cap.* 21. It is thus defaced, the Assent of the King by his Letters patents under the great Seale of *England*, and signed with his hand, and notified in his absence to the Lords of the Parliament, and Commons assembled in the higher House, is and ever was of as good force and strength, as if the person of the King had beene there present, and had assented openly and publikely to the same. And such Royall assent as is aforesaid shall bee taken, for good and effectuall to every intent without any ambiguity of Custome or vsage to the contrary notwithstanding.

In

In this Court is attending, The Lord Chancellor of *England*, or the *L*ord Keeper of the great Seale, or ſome other ſage man as the King ſhall chooſe. By whom the King doth ſhew his mind to the Lords. And hee doth put them in remembrance of thoſe things which are to be treated there before the Lords, who if he be no Baron, or Peere of the Realme, ſitteth neare the King behind the cloath of Eſtate, And is as the Speaker of the Vpper houſe of Parliament.

In the 31. yeare of *Hen.* 8. *Cap.* 10. Intituled an Act concerning placing of the *L*ords in the Parliament Chamber, and other aſſemblies and conferences, of Counſell. It is enacted as followeth. *For aſmuch as in all great Counſels and Congregations of men having ſundry degrees in the Common wealth, it is very requiſit and convenient, that an order be had and taken for the placing and ſetting of ſuch perſons as are bound to reſort to the ſame; To the intent that they knowing their places, may vſe the ſame without diſpleaſure or let of the Councell: Wherefore the Kings moſt Royall Majeſty, although it appertaineth to his Prerogatiue Royall to giue ſuch honor, places and reputation to his Councellors and other his ſubjects as ſhall ſeeme beſt to his moſt excellent Majeſty, He is nevertheleſſe pleaſed and contented for an order to be had and taken in this his moſt high Court of Parliament, That it ſhall be inacted by authority of the ſame, in manner and forme as hereafter followeth.*

Firſt,

First, it is enacted by authority aforesaid, that no person or persons of what estate, degree or condition soever he or they be of (except onely the Kings children) shall at any time hereafter attempt or presume to sit, and have place at any side of the Cloath of State, in the Parliament Chamber, neither of the one hand of the Kings Highnesse, nor on the other: whether the Kings Majesty be there personally present, or absent. And for as much as the Kings Majesty is justly & lawfull supreame head on earth, of the Church of England, *vnder God. And for the exercise of the said most royall Dignity and Office, hath made* Thomas Lord Cromwell, *and Lord privie Seale, his Vicegerent, for good and due ministration of Iustice to be had and vsed in all causes and cases touching the Ecclesiasticall Iurisdiction, and for the godly reformation and redresse of all errors, Heresies, & abuses in the same Church. It is therefore enacted by authority aforesaid, That the said Lord* Cromwell, *having the said Office of Vicegerent, and all other persons who shall hereafter have the said Office of the grant of the Kings Highnesse, his heires & Successors, shall sit and be placed as well in this present Parliament, as in all Parliaments whatsoever hereafter to be holden, on the right side of the Parliament Chamber; and on the same forme that the* Archbishop of Canterbury *sitteth vpon; and above the said Archbishop and his Successors, and shall have place in every Parliament to assent or dissent, as other the Lords of the Parliament.*

And it is enacted, that next to the said Vicegerent shall sit the Archbishops of Canterbury *and* Yorke, *and then next him on the same forme and side the Bishop of* London, *and next to him on the same forme and side the Bishop of* Duresme, *and next to him, on the same forme and side, the Bishop of* Winchester: *and then all the other*

Bishops of both Provinces of Canterbury *and* Yorke *shall sit and be placed on the same side after their anciencies, as it hath beene accustomed.*

And for as much as such persons as now have, or hereafter shall happen to haue other great Offices of the Realme, That is to say, the Office of the Lord Chancellor, Lord Treasurer, Lord President of the Kings Counsell, The Lord privy Seale, The Great Chamberlaine of England, *The Marshal of* England, *The Lord Admiral, The Grand Master or Lord Steward of the Kings most honourable Houshold; The Kings Chamberlain, and the Kings Secretary, haue not heretofore been appointed & ordered for the placing and sitting in the Kings most high Court of Parliament, by reason of their Offices. It is therfore now ordred, and enacted by authority aforesaid, That the said Lord Chancellor, Lord Treasurer, the President of the Kings Counsell, and the Lord privie Seale, being of the degrees of Barons, or above, shall sit and be placed as well in this present Parliament, as in all other Parliaments hereafter to be holden in the left hand of the Parliament Chamber, on the higher part of the forme on the same side, above all Dukes (except onely such as shall be the Kings Sonne, the Kings Brother, the Kings Vnckle, the Kings Nephew, or the Kings Brother or Sisters Sonnes.*

And it is also ordained, and enacted by authority aforesaid, That the great Chamberlaine, the Constable, the Marshall, the Lord Admirall, the Grand Master or Lord Steward, and the Kings Chamberlaine shall sit & be placed after the Lord privie Seale, in manner and forme following, That is to say, every one of them shall sit and be placed aboue all other personages being of the same estate or degree, that they shall happen to be of; That is to say, the Great Chamberlain first, the Constable

ble second, the Marshall third, the Lord Admirall fourth, tht Grand Master or Lord Steward sift, and the Kings Chamberlaine the sixt.

And it is also enacted by authority aforesaid, That the Kings chiefe Secretary, being of the degree of a Baron of the Parliament, shall sit and be placed aboue & before all other Barons, not having any of the Offices afore remembred, and if he be a Bishop, That then he shall sit and be placed aboue all other Bishops, not having any of the Offices aboove remembred.

And it is also ordained and enacted by authority aforesaid, That all Dukes not before mentioned, Marquisses, Earles, Viscounts, and Barons, not having any of the Offices aforesaid, shall sit and be placed after their ancienty, as it hath beene accustomed.

And it is further enacted, that if any person or persons which at any time hereafter shall happen to haue any of the Offices aforesaid, of Lord Chancellor, Lord Treasurer, Lord President of the Kings Counsel, Lord privie Seale, or chiefe Secretary, shall be vnder the degree of a Baron of the Parliament: By reason whereof they have no interest to give any assent or dissent in the said house: That then in every such case, such of them shall happen to be vnder the said degree of a Baron, shall sit and bee placed at the vppermost part of the Sackes, in the middest of the Parliament Chamber, either there to sit vpon one forme, or vpon the vppermost sacke: The one of them above the other in order as is above rehearsed.

Be it also enacted by authority aforesaid, that in all tryals of Treason by Peeres of this Realme: If any of the Peeres that shal be called hereafter to be tryers of such

Treason, shal happen to have any of the Offices aforesaid, That then they having such Offices, shall sit and be placed according to their Offices, above all th' other Peeres that shall be called to such tryals, in manner and forme as is aboue mentioned and rehearsed.

And it is also enacted by authority aforesaid; That as well in all Parliaments, as in the Starchamber, and in all other Assemblies, and Conferences of Counsel, the Lord Chancellour, the Lord Treasurer, the Lord President; the Lord privie Seale, the Great Chamberlain, the Constable, the Marshall, the Lord Admirall, the Grand Master or Lord Steward, the Kings Chamberlaine, and the Kings chiefe Secretary, shall sit and be placed in such order and forme as is aboue rehearsed, and not in any other place, by authority of this present Act.

And in Sir *Edward Coke*, 11. *part. fol.* 1. The case concerning priority of place in the vpper house of Parliament was as followeth, at the Parliament held the 39. *Eliz.* The case was thus:

Thomas Lawarre Knight, Lord *Lawarre*, sonne and heire of *William*, sonne and heire of *George*, Brother and heire of *Thomas*, Sonne and heire of *Thomas* Lord *Lawarre*, exhibited his petition to the Queene to this effect, That whereas *Thomas* the Great grand-father was called to Parliament by Writ of Summons, 3. H. 8. and afterwards this *Thomas* the Great grand-father dyeth; After whose death, *Thomas* his sonne, was called to divers Parliaments by Writ of Summons. And afterwards by act of Parliament 3. E. 6. for divers causes in the said act mentioned, it was enacted, That the said *William* during his life should be disabled to claime & enjoy any dignity or superiority, in any right, estate, &c. by discent, remainder, or otherwise, And afterwards

wards the ſaid *Thomas* the ſonne of *Thomas* dyeth; after whoſe death the ſaid *William* being diſabled, was not called to any Parliament, by writ of ſummons, till Queene *Elizabeth* called him to Parliament by writ of Summons, and ſitteth as youngeſt Lord of the Parliament: And afterwards he dyeth, and now the ſaid *Thomas* his ſonne being called to Parliament by writ of Summons, ſueth to the Queene that he may have place in Parliament, of his Great grand-father (*that is to ſay*) betweene the Lord *Berkley* and the Lord *Willoughby* of *Eresby*: And the ſaid petition was indorſed in theſe words; Her Majeſty hath commanded me to ſignifie to your good Lordſhips, upon the humble ſuit of the Lord *Lawarre*, Shee is pleaſed that the matter ſhall be conſidered and determined in the Houſe.

Robert Cecill.

Which petition being read in the vpper Houſe of Parliament: The conſideration of this was referred and committed to the Lord *Burley*, Lord Treaſurer of *England*, and divers other *Committees*, who at his Chamber at *Whitehall* heard the learned Counſell on both ſides, in the preſence of the two chiefe Juſtices, and divers other Juſtices: And two objections were made againſt the Lord *Lawarre*. Firſt, inſomuch that his Father was diſabled by act of Parliament to claime the dignity: The petitioner may not convay by him who was diſabled, as heire to his Great-grand-father, and by conſequence he may not have the place of his Great grand-father.

But it was reſolved by all the Iudges, That there was a difference betweene a perſonary and a Temporary diſability, and abſolute perpetuall diſability: As

whereas one is attainted of Treason or Fellony; this is absolute and perpetuall disability by corruption of blood, for any of his posterity to claime any hereditament in Fee simple, either as heire to him, or any other; But disability by Parliament without any Attainder, to claime the dignity for his life: That is personall disability for his life onely, and his heires after his death may claime as heire to him, or any other Ancestor above him: The second objection is, that the said *William* hath accepted new Creation of the Queene; which dignity newly gained, discendeth to the petitioner which may not wave: and for that the Petitioner may not have other place then his Father had.

To this it was answered and resolved, that th'acceptance of a new Creation by the said *William* may not hurt the Petitioner, because the said *William* was at that time disabled, and in truth he was no *Baron*, but onely an Esquire; so that when th'old and new dignity discended together, th'old shall be preferred; which resolution was well approved by all the Lords Committees, which was accordingly reported to all the Lords of the Parliament, and allowed by them all: whereupon it was ordered by the Lords, that the Queen should be acquainted with this by the Lord Keeper, which was done accordingly.

Whereupon at the said Parliament, the Lord *Lawarre* in his Parliament Robes, was by the Lord *Zouch* supplying the place of the Lord *Willoughby*, within age at that time; And the Lord *Berkley* also in his Robes, brought into the house, and placed in his said place (that is to say) next after the Lord *Berkley*, *Garter* King at Armes attending upon him, and doing his Office.

In the vpper house of Parliament doth sit the Justices vpon sacks of Wooll, *in medio Camera*; who are called

called thither by the Kings Writ, *quod personaliter interfitis nobiscum ac cum ceteris de consilio nostro prædictis negotiis, tractat, vestrumque consilium impensur.*: And this *negotia* be *Ardua & vrgentia negotia Regni, &c.* And their oath amongst other things is, that they shall counsell the King truely in his businesse, but they have no voyce among the Lords.

If the Reader be desirous to see particular cases happening in Parliament, wherin the opinion of the Iudges there had beene recreated: And how their opinions delivered in Parliament ought to be regarded, he may reade at large in *Egertons post-nati. fol.* 16, *& sequentibus.*

If a Writ of Error be brought in Parliament vpon a Iudgement given in *Kings-Beneh*; The Lords of the Higher house onely, without the Commons are to examine the Errors, and that is by th'advice and counsell of the Iudges, who are to informe them what the Law is, and so direct them in their Iudgement, and if the Iudgement be reversed, then commandement is to be given to the Lord Chancellour to doe execution accordingly. And so was done in the 7. of R. 2. in a Writ brought in Parliament by the Deane and Chapter of *Litchfield*, against the Prior and Covent of *Newport Pannell*, as appeareth by the Record. And if the Iudgement be affirmed, then the Court of Kings Bench are to proceed to execution of the Iudgement, as appeareth in *Howerdewes* case, 1. H. 7. *fol.* 19.

But it is to be noted, that in all such writs of Errors, the Lords are to proceed according to the law, and for their judgement therein, they are informed and guided by the Iudges, and doe not follow their own opinions, or discretions. See *Egertons post-nati fol.* 23.

There doth also sit the Secretaries of Estate, who are

to

to anſwer ſuch Letters or things paſſed in the Councell whereof they have the keeping; And with them the Maſter of the Roles, But they have no voyce in Parliament, if they be not of the degree of a Baron.

Note by *Kirby*, Clerke of the Roles of the Parliament: It is thus in the Bookes of the Law, the 33. *H.6.cap.*17. If a Bill come firſt to the Commons, and they doe paſſe it; then the uſe is to indorſe it in this forme, *Soyt Bayle a ſeigneures:* And then if the Lords nor King doe not alter the Bill, then it ſhall be inroled by the Clerke of the Parliament; and if the Bill paſſe, then it ſhall be inroled, but if it be a particular Bill, then it ſhall be filed upon *filaces*, and that ſhall ſuffice, vnleſſe the party whom it particularly concernes will ſue to haue it inroled, that it may be inroled to be ſure.

If the Lords will alter a Bill, ſent to them from the Commons Houſe, in a thing that may ſtand with the Bill, they may doe ſo without remanding to the Commons. And if the Commons doe grant domage for foure yeares, and the Lords will grant it but for two yeares, this Bill ſhall not be delivered againe to the Commons; But if the Commons doe grant but onely for two yeares, and the Lords doe grant it for foure yeares, then the Bill muſt be remanded up to the Commons, and in that caſe the Lords muſt make a Scedule of their intent, or elſe indorſed in this forme, *Les ſeigneures ſe aſſent pur durar pur quater anne:* And when the Commons haue the Bill again, if they doe not aſſent to it, then it is no Act or *Statute*; and if the Commons doe conſent, then they doe indorſe their anſwer upon the *Margent* within the Bill in a certaine forme.

And then it ſhall be delivered vnto the Clerke of the Parliament, *vt ſupra*.

If the Bill be firſt delivered to the Lords, and the bill doth

doth passe them, they vse not to make any indorsement, but to send the Bill to the Commons, and if it passe them also, it is vsed to be thus indorsed, *Les Commones sont assentant, &c.* And therefore if *Iohn at Stile* be attainted of Trespasse by Parliament, if hee doe not come in by such a day, he shall forfeit such a sum. And the Lords doe give a longer day, if it doe not come to the Commons againe, it is no Act or Statute, because it was not remanded againe to the Commons after the enlargement of the day given by the Lords.

Every Bill that doth passe the Parliament in both Houses, shall have relation to the first day of the Parliament: And the vse is, not to make mention what day the Bill was delivered in to the Parliament; If no day be specially appointed by the Statute, when it shall Commence: As if one Parliament be holden by divers prorogations, *Plowdens Commentaries fol. 79. a, 6.*

If a Parliament doe Commence before Pentecost, and hath continuance after Pentecost and the Commons doe agree to a Bill after Pentecost, ,and in the same doe give day till Pentecost next comming; and the Lords doe so also, because the Bill shall have no relation the first day of the Parliament. Therefore if it be not prevented, it shall be taken for that Pentecost that is past at that Sessions, whereas th'intent of the Lords and Commons was, that it should be a future Pentecost after that Pentecost mentioned in the Bill. See *Brookes Prerogatives and Parliaments*, 4.

The Barons in the vpper house of Parliament may in some cases give their voyces by procuracie, not so in the Commons house, and those Procters must be Barons, and of the Higher house of Parliament. But in the Cómons house of Parliament it is otherwise, for the Clarke of the Parliament takes the notice of the most hands or voyces sounding at once. And therefore if

their assent be issuable, the Clergie may say *Per majorem numerum generalis*. So in case of Election of Crowner or a Knight of the parliament. See *Plowdens Commentaries. 126. a.*

All the priviledges which doe belong to those of the Commons house of parliament: *a fortiori* doe appertain to all the Lords of the upper house; for their persons are not onely free from arrests during the Parliament, but during their lives, nevertheless th originall cause is by reason they have place and voyce in Parliament: And this is manifest by expresse authorities grounded upon excellent reasons in the Booke of Law.

And if a Baron, Viscount, Earle, Marquesse or Duke, of *England* bring any action reall or personall, and the defendant pleadeth in abatement of the Writ, That he is no Baron, Viscount, Earle, &c. And thereupon the demaundant or plaintiffe pleadeth in abatement of the Writ, and taketh issue; This issue shall not be tryed by a Iury, but by the Records of the Parliaments whether he or his Anoestors, whose heire he is, were called to serve there as a Peere, or one of the Nobility of the Realme, See Sir *Edward Cokes 6 part. 53. & 7. part fol. 17. a.*

In the ancient *Britaines* and *Saxons* Kings dayes, the Archbishops and Bishops were called to their Parliaments, or other assemblies of State; which was done not so much in respect of their tenures, for in those dayes all their tenures were *Francke Almenage*, but especially because the Lawes and Councels of men were then most currant and commendable, and had a more blessed issue and successe, when they were grounded vpon the feare of God, the root and beginning of wisedome. And therefore our wise and religious ancestors called thither those chiefe and principall persons of the Clergie, who by their place and possession, by their gravi-

gravities, learning and Wiſedome might beſt adviſe them, what was the law of God ; his acceptable will and pleaſure : That they might from their humane Lawes anſwerable, or at the leaſt not contrary or repugnant thereunto. Nevertheleſſe ſhortly after the *Norman* Conqueſt, the Conquerour altered the tenure of the Biſhoprickes, not without ſome complaint and griefe of the Clergie, as it is mentioned in *Mathew Paris*, *Anno* 1070.

And in the Conſtitutions of *Clarendon*, in the time of H. 2. *Anno* 1164. It is expreſſed in the eleaventh Article.

Thereby we ſee the preſence of the Biſhops in Parliament, in reſpect of their Baronies, *quouſque Perueniatur ad diminutionem, &c*, for ſo even vnto our times, when queſtion is had of the attainder of any Peere, or other in Parliament; the Archbiſhops and Biſhops depart the higher houſe, and doe make their Proctors ; for by the decrees of the Church, they may not bee Iudges of life and death. Ever ſince the Conqueſt the Archbiſhops and Biſhops have no title to have place and voyce in Parliament, but onely in reſpect of their Temporall Baronies.

And it is to be obſerved, that although of latter times the vſe and manner of penning of Statutes, is that it is enacted by the Lords Spirituall and Temporall, and the Commons in the ſame aſſembled : yet the ancient forme was not ſo, which you may ſee exemplified in Sir *Edward Cokes* 8. *part*, *fol.* 19.

And good acts of Parliaments may be made, though the Archbiſhops and Biſhops would not conſent thereunto; for a Statute was made *Anno* 1196 by the King, the Barons and the Commons (*Clero excluſo*,) and this was at a Parliament holden at Saint *Edmundsbury*, in the raigne of E. 1. as it is reported by *Iewell* Biſhop

of *Sulisbury* against *Harding fo.* 620. And in the province of *Mirton*, in the time of H. 8. 1272. a matter was moved of Bastardy, touching the legitimation of Bastards, borne before Marriage; where it is said, That the Statute did passe intirely with the Lords temporall, against the wills of the Lords spirituall: which Statute is in the Bookes in the 20 yeare of H. 8, 3, c, 9.

And in the 11. yeare of R. 2. cap. 3, It is enacted, that the Appeales, Pursuits, Accusements, Processes, Iudgements, and Executions, made and given in this present Parliament, be approved, affirmed and established; as a thing duely made for the weale and profit of the King our Soveraigne Lord, and of all the Realme, notwithstanding that the Lords Spirituall and their procurators did absent themselves out of the Parliament, the time of the said Iudgement given, for the honesty and salvation of their estates, as it is contained in a protestation made by the Lords Spirituall, and their procurators delivered in this present Parliament.

See *Kelhaueyes* Booke, *fo.* 184. in the 7. H. 8. The Iustices did say, that our Soveraigne Lord the King may well hold his Parliament by him and his Temporall Lords, and by the Commons also, without the Spirituall Lords; for the Spirituall Lords have not any place in the Parliament Chamber, by reason of their spiritualties, but ouely by reason of their Temporall possessions.

The Soveraigne power of this high Court of Parliament is this; That albeit the Kings Majestie hath many great priviledges and prerogatives, yet many things there are, not effectuall in Law to passe vnder the great Seale by the Kings Charter without Parliament: as vpon this point it was resolved by all the Iudges in the Princes case: That the Dukedome of *Cornewall, &c.* did not, nor could passe from E. 3. by his

his Charter made in parliament; That his Sonne and heire apparant, and to his heires informe, as it was intended and made in *Anno* 11. of his reigne. But of neceſſity it was, and ſo was done by authority of Parliament: which Caſe is notable and worth the reading. See Sir *Edw. Cokes* 8, *part. fo.* and his 7, *part fo.* 7. *a.* The King by his Letters Patents may make a diviſion but cannot naturaliſe him to all purpoſes, as an Act of Parliament may doe; for the Kings Charter cannot make any hereditable, in this caſe, that by the common Lawes cannot inherit. And herewith agreeth the 36. of H. 8. *Denizon Brooke.*

Bracton in the beginning of his ſecond Booke, ſaith; *Nihil aliud poteſt Rex in terris cum ſit Dei miniſter & vicarius quam quod de jure poteſt*: and a little after, *Itaq, Poteſtas ſua eſt Iuris non iniuria & ſicut ſit author Iuris non debet inde Iniuriarum naſci occaſio vnde jura naſcuntur.*

And it appeareth in *Fitzharberts natura Brevium*, 222 in the Writ *ad quam damnum*, that every grant of the King or gift, hath his condition expreſſed or implyed, as by the Law annexed to it; *Itaque quod per donationem illam patria magis ſolito non oneretur ſeu grauetur.*

And therefore it was reſolved by all the Iudges 4. *Iacobi*, that they who digge for ſalt-peter, may not dig within the Manſion houſe of any Subject, without his aſſent, for the manifeſt inconveniences that thereby may grow to the owner of the houſe. See Sir *Edward Coke* 11. *part* 82.

Alſo the Commiſſion to be made, the purveyers for Timber, for the Kings vſe, yet they cannot by that authority make Timber Trees growing vpon any mans Freehold: for that is prohibited by *Magna Charta ca.* 21. *nos nec ballivi noſtri nec aly capimus boſcum alienum*

lienum ad castra vel ad alia agenda nostra, nisi per voluntatem cujus boscus ille fuerit.

A Commission was awarded to take singing Boyes in Cathedrall Churches, or in other places where such are instructed for the furnishing of the Kings Chappell; these generall words by construction shall have a reasonable vnderstanding: That is to say, such children who be taught to sing, thereby to acquire or get their livings, such may be taken for the Kings service; But the sonne of a Gentleman, or any other, who is taught to sing for his recreation, ornament, or delight, may not bee taken against his will; or against the will of his parents, or friends, and so it was resolved by all the Iudges and whole Court of Starre-Chamber, 43. *Eliz.*

If a man be attainted of Felony or Treason, by Verdict, Outlary, Confession, &c, his blood is corrupted: which is a perpetuall and absolute disability for him or his posterity, to claime any hereditament in Fee-simple, either as heire to him or any Ancestor *Paramount* him, and he shall not be restored to his blood without Parliament: and the King may give to any attainted person his life, by this Charter of Parliament. See *Stamfords pleas*, 195. For the King cannot alter the Common Law, or the generall customes of the Realme, such as the discent of *Gavill* kinde, *Borough*, *English*, or such like, without Parliament. See *Brookes Prerogatine*, 15. & 11; H. 4. *c.* 73.

And it is set downe for a rule; That if a King have a Kingdome by discent there, seeing by the Law of that Kingdome he doth inherit that Kingdome, he cannot change those lawes of himselfe, without consent of Parliament.

Forteseugh also saith in his 9, *c. fo.* 25.6. If the power of the King over his Subjects were Royall onely, and

not

not politicke, then he might change the Lawes of the Realme, and charge his Subjects with Tallages and other Burdens, without their consent. And such is the dominion of the Civill Law purports, when they say, *Quod principi placuit legis habet vigorem.* But by the lawes of this Kingdome, the King cannot by his Proclamation alter the Law; But the King may make proclamation that he shall incurre the indignation of his Majesty, that withstanding it. And by his absolute authority, the King may commit any one to prison during his pleasure, see *Stamford* 72. But the penalty of not obtaining his proclamation, may not bee upon paine of forfeiture of his Goods, his Lands, or his life without Parliament, See *Cromptons Courts* 14. *a*, & 16.6. *sed omnes non capit hoc verbum:* for they of another profession in Law say, that of these two, one must needs bee true, that either the King is above the Parliament, that is the positive law of the Kingdome; or else, that he is an absolute King, *Aroft. lib. Pliet. c.* 16. And therefore though it be a mercifull policie, and also a politicke mercy; not alterable without great perill, and to make Lawes by the consent of the whole Realme, because no one party shall have cause to complaine of a partialitie, yet simply to bind the King to or by those lawes, were repugnant to the nature and constitution of an absolute Monarchy.

In some speciall cases there sometimes may bee liking of Subjects without land of possession, as in the government which *Moses* had over the children of *Israel* in the Wilderneſſe, and in the case which Sir *Iohn Popham*, the late Lord chiefe Justice, did put in the Parliament, If a King and his Subjects be driven out of his Kingdome by his Enemies, yet notwithstanding he continueth still King over his subjects, and they still are bound to him by their bonds of allegeance, where-

soever

ſo ever they be: But he cannot be a King without Subjects, for that were *Imperium inbellum & Rex & ſubditi ſunt relativa.*

I beleeve *Salomon* that ſaith, *per me reges regnant & Principes juſta decernunt*, and I make no doubt, but as God ordained Kings, and hath given Lawes to Kings themſelves: ſo he hath authorized and given power to Kings to give Lawes to their Subjects, and ſo Kings did firſt make Lawes, and then ruled by their lawes, and altered and changed their lawes from time to time as they ſaw occaſion, for the good of themſelves and of their Subjects.

By the premiſſes it appeareth that Acts of parliament and Statutes are made in this high Court of parliament by the King, with the conſent of the Commons, or by the greater part of them, for ſo ſaith *Littleton* in the 15. E. 4. *fol.* 2. *a.*

In the *P*arliament, if the greater part of the Knights of the ſhiere doe aſſent to the making of an Act of Parliament, and the leſſer part will not agree to it, yet this is a good Act or Statute, to laſt *in perpetuum*: and that the law of *Major. partis* is ſo in all Counſels, Elections, &c. both by the rules of the Common law and the Civill, and Common law alſo.

In this Court of *P*arliament, they doe make new poſitive Lawes or Statutes, and ſometimes they inlarge ſome of them, as unto them ſeemeth good: and it is good counſell, that in making of lawes, *quoad ejus fieri poſſit, quã plurima legibus definiantur, quam paciſſima verò Iudicis arbitrio relinquantur*, Yet for ſo much as every conſiderable circumſtance cannot be fore-ſeene at the time of the making of the law, for, *rerum progreſſus oſtendunt multa quæ in initio præcaveri ſeu provideri non poſſunt.* Therfore by the very intent of the makers of the ſtatute, they doe many times leave to bee

ſupplyed

ſuppoſed by the diſcretion of th'executioner of the Law, that thing which was not conveniently comprehended before hand, by the wiſedome of the Authors of the ſame : for the expounding of the *Lawes* doth ordinarily belong to the reverend Iudges, and in caſe of greateſt difficulty of importance, to the high Court of Parliament. See *Plowdens Commentaries, fol.* 363. *a.* 364, & 365.

And the Iudges doe ſay, that they may not make any interpretation againſt the expreſſe words of the Statute, where th'intent of the makers of the Law doe appeare to the contrary, and where no inconvenience by the Statute ſhall enſue, for in ſuch caſes *A verbis legum non eſt recedendū.*

But to exemplifie all the ſeverall kinds and formes of penning them, and the words of them taken and conſtrued, ſometimes by execution, ſometimes by reſtriction, ſometimes by implication, ſometimes by diſjunction, ſometimes a diſiunctive for a copulative, ſometimes a copulatiue for a diſiunctiue, the preſent tenſe for the future, the future for the preſent, ſometimes by equity out of the reach of the words, ſometimes taken in a contrary ſence, ſometimes ſingularly, as *Continens* pro *contento*, and ſuch like, will aske a volume by it ſelfe, and in my opinion is not incident to this diſcourſe of the *Iuriſdiction of high Courts of Parliament.*

Hereunto is annexed.

A briefe Abſtract of the worthineſſe of, and ſome memorable matters done by PARLIAMENTS in this Kingdome of ENGLAND.

BY Parliaments all the wholeſome fundamentall Lawes of this Land were and are eſtabliſhed and confirmed.

By Act of Parliament the Popes Power and Supremacie, and all ſuperſtition and Idolatry are abrogated, aboliſhed and baniſhed out of this Land.

By Act of Parliament Gods true Religion, worſhip and ſervice are maintained and eſtabliſhed.

By Act of Parliament the two famous Vniverſities of Cambridge *and* Oxford, *have many wholeſome and helpefull Immunities.*

By Parliament one Pierce Gaveſton, *a great favorite and notable miſleader of K.* Edw. 2. *was removed, baniſhed, and afterwards by the Lords executed.*

By Parliament Empſon *and* Dudley, *two notorious polers of the Common wealth, by exacting pe-*

nall

vall Lawes on the Subiects, were discovered, and afterwards executed.

By Parliament the damnable Gunpowder Treason (hatched in Hell) is recorded to bee had in eternall Infamie.

By Parliament one Sir Giles Mompesson, *a Moderne Caterpiller and poler of the Common Wealth, by exacting vpon Inholders, &c. was discovered, degraded from Knighthood, and banished by Proclamation.*

By Parliament Sir Francis Bacon, *made by King* Iames *Baron* Veralam, *and Viscount St.* Albanes, *and Lord Chancellour of* England, *very grievous to the Common wealth, by bribery, was discovered and displaced.*

By Parliament Sir Iohn Bennit *Iudge of the Prerogative Court, pernicious to the Common wealth in his place, was discovered and displaced.*

By Parliament Lyonell Cranfield (*sometimes a Merchant of* London) *made by* K. Iames *Earle of* Middlesex, *and Lord Treasurer of* England: *hurtfull in his place to the Common wealth, was discovered and displaced.*

By Parliament one Sir Francis Mitchell, *a jolly Iustice of Peace for* Middlesex *in the Suburbes of* London, *another notable Caukerworme of the Common wealth, by corruption in exacting the penall Lawes vpon poore Alehouse-keepers and Victuallers, &c. was discovered, degraded from Knighthood, and vtterly disabled for being Iustice of Peace.*

By Parliament Spaines *late fraud was discovered, and by Act the two Treaties, with that perfidious Nation, for the match of the Prince, our now gracious King; and restitution of the Palatinate were dissolved and annihilated: both which had cost the King and his Subiects much monie, and much blood. We may remember that that sage Counceller of State Sir* William Cecill, *Lord* Burleigh *and Lord Treasurer of* England, *was oft times heard to say,* Hee knew not what an Act of Parliament might not doe: *which sage saying was approved by King* James, *and by his Maiestie alleaged in one of his published speeches.*

Which being so, now the face of Christendome being at this present so torne & miserably macerated, and the Christian World distracted; the Gospell in all places, almost persecuted, both Church and Common wealth, where the Gospell is professed in all places beyond the Seas, lying a bleeding (as we may say) and we our selves as home not without feare and danger. To conclude, what good may wee not hope and pray for, by this present and other ensuing Parliaments: the onely meanes to rectifie and remedy matters in Church and Common-Wealth much amisse. Amen.

Vivat Rex
Floreat Regnum
Bene valeat Parlamentum.

FINIS.